

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMHO COMPANY, LTD., a South Korean
Company,

Plaintiff,

v.

SORKS-Iturup, a Russian Company, et al.,

Defendants.

CASE NO. C04-2009RSM

ORDER ON MOTION TO COMPEL

This matter is before the Court on the motion of garnishees and third-party plaintiffs William Turner, Unimak America LLC, and CMK Vessel Management to compel Mr. S.H. Kim to appear for deposition (Dkt. # 34). Having considered the motion, response, and reply, together with the attached declarations, the Court finds and rules as follows:

(1) The Court finds that counsel's declaration fails to comply with the certification requirements of F.R.Civ. Proc. 37 (a)(2)(A) and Local Rule CR 37(a)(2)(A). A good faith to meet and confer on a discovery dispute in this district requires a face-to-face meeting or a telephone conference. Local Rule CR 37(a)(2)(A). Counsel's reference to e-mails does not satisfy this requirement, and the general reference to telephone calls fails to sufficiently "detail the efforts to confer and explain why they proved fruitless." Prescient Partners, L.P., v. Fieldcrest Cannon, Inc., 1998 WL 67672 (S.D.N.Y. 1998); *citing* Tri-Star Pictures, Inc., v. Unger, 171 F.R.D. 94, 99 (S.D.N.Y. 1997). The certification must "accurately and specifically convey to the court who, where, how, and when the respective parties attempted to

1 personally resolve the discovery dispute.” Shuffle Master, Inc., v. Progressive Games, Inc., 170 F.R.D.
2 166, 170 (D. Nev. 1996).

3 (2) The consequence of failure to comply with the mandatory language in Rule 37 is that the
4 Court will not consider the motion. Moreover, it appears from plaintiff’s response that the motion is
5 moot, as plaintiff has represented that Mr. Kim is available for deposition the week of July 5. Dkt. # 36.

6 (3) Accordingly, the motion to compel is DENIED. However, in the event Mr. Kim fails to
7 appear for deposition, garnishee and third-party plaintiffs may renew the motion to compel and apply for
8 expenses under F.R.Civ. Proc. 37(a)(4)(A).

9 (4) The Court declines to assess costs against either party at this time.

10
11 DATED this 17th day of June, 2005.

12
13
14 /s/ Ricardo S. Martinez

15 RICARDO S. MARTINEZ
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27